



**DEPARTMENT OF JUSTICE**

**[OMB Number 1121-NEW]**

**Agency Information Collection Activities; Proposed Collection Comments Requested;**

**New collection: Death in Custody Reporting Act Collection**

**AGENCY: Bureau of Justice Assistance, Department of Justice**

**ACTION: 60-day notice.**

**SUMMARY:** The Department of Justice (DOJ), Bureau of Justice Assistance will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:**

If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Chris Casto, Bureau of Justice Assistance, 810 Seventh Street NW., Washington, DC 20531 (email: [DICRAComments@usdoj.gov](mailto:DICRAComments@usdoj.gov); telephone: 202-616-6500).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points:

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether the proposed collection will result in the collection of timely, accurate, complete, and reliable information;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced;

—Evaluate the extent to which the information to be collected should be made publicly available; and

—Evaluate whether the burden of the collection of information on those who are to respond can be minimized and, if so, how, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Overview of this information collection:

(1) **Type of Information Collection:** New collection.

(2) **The Title of the Form/Collection:** Death in Custody Reporting Act Collection

(3) **The agency form number, if any, and the applicable component of the Department sponsoring the collection:** This collection includes the following newly-developed forms to

respond to the Death in Custody Reporting Act (the DCRA), which respondents will be asked to complete through an online, web-based portal:

- *Form DCR-1: Quarterly Summary.* This summary form requires States to either (1) identify all reportable deaths that occurred in their jurisdiction during the corresponding quarter and provide basic information about the circumstances of the death, or (2) affirm that no reportable death occurred in the State during the reporting period.
- *Form DCR-1A: Incident Report, Law Enforcement.* This incident report form requires States to provide additional information for each reportable death identified in the Quarterly Summary that occurred during interactions with law enforcement personnel or while in their custody. The required information includes the circumstances surrounding the death and additional characteristics of the decedent.
- *Form DCR-1B: Incident Report, Corrections.* This incident report form requires States to provide additional information for each reportable death identified in the Quarterly Summary that occurred while the decedent was in the custody of a jail, prison, or similar detention facility. The required information includes the circumstances surrounding the death and additional characteristics of the decedent.
- *Form DCR-2: Open Source Summary.* This summary form requires States to confirm whether the deaths identified through DOJ's open source review are qualifying reportable deaths and were already reported in the Quarterly Summary (Form DCR-1). For reportable deaths that were not included in the Quarterly Summary, the respondent is required to submit the corresponding Incident Report (Form DCR-1A or DCR-1B).

- *State Data Collection Plan.* By the beginning of each fiscal year, each State is required to submit its plan – or an update to an existing plan – on how it will collect the information that the DCRA requires the State to report on a quarterly basis that achieves maximum timeliness, accuracy, and completeness.

The applicable component of the Department of Justice sponsoring this collection is the Office of Justice Programs, Bureau of Justice Assistance.

**(4) Affected public who will be asked or required to respond, as well as a brief abstract:** In order to comply with the mandate of the DCRA, the Department of Justice, Bureau of Justice Assistance, is proposing a new data collection for State Administering Agencies to collect and submit information regarding the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility).

For purposes of this collection, the term “State” includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. Thus, the affected public that will be asked to respond on a quarterly basis each federal fiscal year include 56 State actors. Indirectly, these States will be requesting information from approximately 19,450 State and local law enforcement agencies (LEAs), 50 State departments of corrections, and 2,800 local adult jail jurisdictions.

DOJ previously published a notice in the Federal Register on August 4, 2016, describing a plan to collect DCRA information in Fiscal Years (FYs) 2016 and 2017. Based on comments received from the public, DOJ has amended its plan which is described more fully below.

### ***Background***

The Death in Custody Reporting Act (DCRA) requires states and federal law enforcement agencies to report certain information to the Attorney General regarding the death of any person occurring during interactions with law enforcement officers or while in custody. *See* 42 U.S.C. §§ 13727(a) & (b), 13727a(a) & (b). It further requires the Attorney General and the Department of Justice (Department) to collect the information, establish guidelines on how it should be reported, annually determine whether each state has complied with the reporting requirements, and address any state's noncompliance.

The DCRA, which Congress enacted in December 2014, builds on an earlier law, also called the Death in Custody Reporting Act, enacted in 2000 (P.L. 106-247). The 2000 law required States to report “information regarding the death of any person who is in the process of arrest, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, or other local or State correctional facility (including any juvenile facility) . . .” In response, the Department of Justice through the Bureau of Justice Statistics (BJS) of the Office of Justice Programs developed a Deaths in Custody Reporting Program (DCRP), which had two parts. First, BJS collected data on deaths that occurred while the decedent was in the custody of local jails or State prisons. Second, BJS collected information on deaths that occurred during the process of arrest (arrest-related deaths, or ARDs). The DCRP collected information on deaths

regardless of the manner of death, including those that resulted from accidents, suicides, natural causes, law enforcement homicides, and other homicides.

Although the 2000 law expired in 2006, BJS continued to collect data on deaths in jails and prisons. The most recent reports based on the prison and jails data collection can be found at <http://www.bjs.gov/index.cfm?ty=tp&tid=19>. BJS continued the ARD program as well, but it was suspended in 2014 due to an assessment which revealed that variations in data collection methodology and coverage among States resulted in an insufficient census of arrest-related deaths. BJS then tested a new methodology. Instead of relying solely on States to affirmatively submit information on reportable ARDs, BJS piloted a mixed method approach using open sources to identify eligible cases, followed by data requests to law enforcement, medical examiners, and/or coroner offices for incident-specific information about the decedent and circumstances surrounding the event. During the follow-up, BJS also would request information on other ARDs that had not been identified through open sources. The results of the redesigned “open source review” approach, which are available at <http://www.bjs.gov>, showed substantial improvements in data coverage and quality.

In enacting the current DCRA, Congress maintained the reporting structure that places the primary responsibility of reporting DCRA information on States and added new provisions that were not in the 2000 law – namely that the Attorney General was granted authority to establish guidelines and to determine whether States are in compliance with those standards. A noncompliant State is subject, at the discretion of the Attorney General, to a 10% reduction of its Byrne Justice Assistance Grant (Byrne JAG), and the amount of any reduction is to be reallocated to States that are found to be in compliance. Because the new provisions envision the data collected to be used to determine compliance and potentially assess penalties on Byrne JAG

grantees, the Department's plan described below shifts the responsibility of DCRA data collection from BJS, which may collect data only for statistical and research purposes, to the Bureau of Justice Assistance. Thus, BJS in 2018 will suspend the current DCRP data collection efforts in jails and prisons and will not pursue a revised ARD program.

### ***Collection Process***

DOJ proposes the following plan to collect DCRA information in fiscal year 2017 and beyond (and also describes below a plan to collect DCRA information for fiscal year 2016). The plan, which constitutes "guidelines established by the Attorney General" pursuant to section 2(a) of the DCRA, combines elements of past approaches shown to increase data quality and coverage of reportable deaths with elements with provisions specifically required by the statute.

For purposes of this notice, the term "reportable death" means any death that the DCRA or the Department's guidelines require States to report. Generally, these are deaths that occurred during interactions with law enforcement personnel or while the decedent was in their custody or in the custody, under the supervision, or under the jurisdiction of a State or local law enforcement or correctional agency, such as a jail or prison. Specifically, the DCRA requires States to report information regarding "the death of any person who is detained, under arrest, or is in the process of being arrested, is en route to be incarcerated, or is incarcerated at a municipal or county jail, State prison, State-run boot camp prison, boot camp prison that is contracted out by the State, any State or local contract facility, or other local or State correctional facility (including any juvenile facility)." 42 U.S.C. § 13727(a). The Department interprets the Act's list of circumstances to include any deaths that occurred:

- Due to any use of force by law enforcement personnel (*e.g.*, officer-involved shootings and deaths caused by law enforcement weapons or tactics).
- While the decedent's freedom to leave was restricted by law enforcement prior to, during, or following an arrest – including during detention for questioning or investigation (*e.g.*, a *Terry* stop); during the process of apprehension (*e.g.*, the pursuit of a criminal suspect, or a standoff with law enforcement); while in the custody of, or shortly after restraint by, law enforcement personnel (even if the decedent was not formally under arrest); or while in transit by law enforcement personnel.
- During an interaction with law enforcement personnel responding to medical or mental health assistance (*e.g.*, in response to suicidal persons).
- While the decedent was confined in a correctional or detention facility, including a prison, jail, boot camp, lockup, or booking center.
- While the decedent was under the jurisdiction or supervision of a law enforcement agency or correctional or detention facility but located elsewhere, such as special jail facilities (*e.g.*, medical/treatment/release centers, halfway houses, or work farms), or in transit.

Please note that the DCRA information that States submit to the Department must originate from official government records, documents, or personnel.

The DCRA requires quarterly reporting. Because these data collection guidelines will not be finalized before the 2nd quarter of FY 2017, quarterly reporting will begin with the 3rd and 4th quarters of FY 2017 and continue quarterly thereafter. Reporting for the 3rd and 4th quarters of



FY 2017 will include only reportable deaths occurring during interactions with law enforcement personnel or while in their custody (*i.e.*, deaths reportable on Form DCR-1A), and not deaths occurring in the jail, prison, or detention settings. Deaths in prisons and jails occurring during 2016 and 2017 will be captured by BJS through its existing data collection program on deaths in prisons and jails. Beginning with FY 2018, quarterly DCRA reporting will include all reportable deaths—deaths occurring during interactions with law enforcement personnel or while in their custody and deaths in jail, prison, or detention settings.

*Please note that the Department will not make any compliance determination based on a State's FY 2017 data reporting.* States are expected to begin reporting pursuant to the DCRA during the 3rd and 4th Quarters of FY 2017, but the Department will not find a State to be in noncompliance or reduce a State's grant funding for noncompliance because of reporting failures during FY 2017. This grace period for FY 2017 is necessary to allow States time to develop and implement their data collection and reporting plans. It will be important for States to report during FY 2017, however, so that they have an opportunity to test their abilities to report the data effectively, to identify and correct any flaws in their data collection and reporting systems before reporting for FY 2018 begins, and to develop the data collection plans that they will use for FY 2018. *The Department will assess states' compliance with their reporting obligations over FY 2018, and States that fail to comply during FY 2018 will be subject to a reduction of their grant funding, pursuant to the DCRA.*

States will be required to complete the following four steps in order to be in compliance with DCRA requirements:

*(1) Quarterly Summary.* For each quarter in a fiscal year, a State must complete the Quarterly Summary (Form DCR-1) and submit it by the reporting deadline. The Quarterly Summary is a list of all reportable deaths that occurred in the State during the corresponding quarter with basic information about the circumstances of each death. If a State did not have a reportable death during the quarter, the State must so indicate on the Quarterly Summary. The reporting deadline to submit the Quarterly Summary is the last day of the month following the close of the quarter. For each quarter, DOJ will send two reminders prior to the reporting deadline.

*Example.* The second quarter of a fiscal year is January 1 – March 31. The deadline to submit the second quarter Quarterly Summary is April 30. DOJ will send a reminder to States on March 31 and April 15.

*(2) Incident Reports.* For each reportable death identified in the Quarterly Summary, a State must complete and submit by the same reporting deadline an Incident Report (Form DCR-1A or DCR-1B depending on the agency involved or that had custody of the defendant at the time of death), which contains specific information on the circumstances of the death and additional characteristics of the decedent. These include:

- The decedent's name, date of birth, gender, and other demographic information.
- The date, time, and location of the death.
- The law enforcement or correctional agency involved.
- Precipitating events and reason for law enforcement personnel's initial contact with the decedent (*e.g.*, whether the decedent committed or allegedly committed any crimes).

- The decedent’s behavior during the incident (*e.g.*, whether the decedent threatened or assaulted anyone; exhibited mental health or substance abuse issues; or possessed or appeared to possess a weapon).
- Law enforcement actions during the incident (*e.g.*, engaged in pursuit or restraint tactics; used force; discharged a firearm, and if so, how many shots were fired; the number of officers responding to the incident).
- Manner of death.

States must answer all questions on the Incident Report before it can submit the form. If information about a death is unavailable due to an ongoing criminal or internal affairs investigation, the State may select the “unavailable, pending investigation” answer, if available. The State then must identify the type of investigation, which agency is conducting the investigation, and when the investigation is expected to be completed. If the State does not have sufficient information to complete one of the questions, then the State may select the “unknown” answer, if available, and then identify when the information is anticipated to be obtained. An “unknown” response is valid only if the State has contacted the law enforcement or correctional agency involved in the death and the information is not known to that agency. For “under investigation” or “unknown” responses, States are expected to provide that information when it becomes available, and DOJ will follow up with States in subsequent reporting periods to update previous entries.

(3) *Open Source Summary.* Within 15 days after each reporting deadline, DOJ will send to each State an Open Source Summary (Form DCR-2) with a prepopulated list of deaths identified through the open source review for the relevant quarter. States will have until the following

quarter's reporting deadline to submit an Incident Report (Form DCR-1A or DCR-1B) for any reportable death identified on the Open Source Summary that was NOT reported by the State on the Quarterly Summary (Form DCR-1). If a death identified in the Open Source Summary is determined by the State to not be reportable under the DCRA, the State must so indicate, also by the following quarter's reporting deadline.

*Example.* A State submits its second quarter Quarterly Summary (Form DCR-1) and corresponding Incident Reports by the reporting deadline – April 30. By May 15, DOJ will send to the State the Open Source Summary (Form DCR-2) that lists second quarter reportable deaths identified through the open source review. The State will have until the third quarter reporting deadline – July 31 – to submit an Incident Report for any deaths on the Open Source Summary for which an Incident Report was not previously submitted.

*(4) State Data Collection Plan.* By the first day of each fiscal year, each State must submit to DOJ its plan for collecting the required information on reportable deaths on a quarterly basis that achieves maximum timeliness, accuracy, and completeness. The State Data Collection Plan should include, at a minimum, a description of how the State will communicate with relevant law enforcement and correctional agencies within its jurisdiction, receive accurate and complete information on reportable deaths, and conduct appropriate follow up to ensure reliability of the information transmitted. Each State must also identify a point of contact responsible for submitting the information to DOJ. On an annual basis, the State must review its plan and update it as necessary. States will not be required to submit its Data Collection Plans for FY 2017, but will be required to submit one for FY 2018 and update it thereafter. Information on State Data Collection Plans will aid DOJ in assisting States that are seeking to improve their

collection plans and help DOJ evaluate the reliability of all data collected. DOJ will make each State Data Collection Plan available to the public but will not assess the merits of the plan for compliance purposes.

### ***Compliance Determination***

Beginning with FY 2018, DOJ will determine on an annual basis whether States have complied with the DCRA by completing the four requirements listed above. A State found to be not in compliance with all of the DCRA reporting requirements will be subject to a penalty of 10% of its Byrne JAG award, consistent with the statutory language of the DCRA. This penalty, if applied, would reduce the State's Byrne JAG award for the following fiscal year. The penalty will be applied to the portion of the Byrne JAG award that is allocated to and controlled by the State, and not to amounts allocated to localities. The noncompliant State's penalty amount will be reallocated in accordance with Byrne JAG formula calculations to States that have been found to be in compliance for the corresponding fiscal year.

A noncompliant State, however, will have the opportunity, in lieu of the imposition of a 10% penalty, to elect to redirect a portion of its Byrne JAG award to use within the State to assess and improve its DCRA collection. The amount a State can voluntarily redirect internally under this "pre-penalty" option is as follows: for the first two noncompliance determinations, 5% of the State portion of its Byrne JAG award; for any subsequent noncompliance determinations, 10%. There is no limit to the number of times a State may choose the "pre-penalty" option.

*Example.* State X fails to submit two Quarterly Summaries in fiscal year 2019 and is thus found to be not in compliance. Instead of being penalized for noncompliance, State X may choose the pre-penalty option and use 5% of its fiscal year 2020 Byrne JAG award

allocated to the State to improve its DICRA collection efforts. If State X does not choose the pre-penalty option, the State portion of its fiscal year 2020 Byrne JAG award is reduced by 10% and reallocated to States that were found to be in compliance for fiscal year 2019.

Should a State encounter an extraordinary circumstance preventing it from completing any of the DCRA requirements (e.g., a natural disaster that compromises a State's data collection and reporting infrastructure), the State may submit a letter to DOJ signed by its Governor certifying the reason for noncompliance and requesting specific relief. In considering such requests, DOJ will be guided by analyzing, among other things, the severity of the described extenuating circumstances, past history, if any, of the State's compliance with DCRA requirements, and the State's description of how it plans to modify its processes to address the extenuating circumstance.

#### ***Collection of Data from FY 2016 and the first two Quarters of FY 2017***

To collect data from FY 2016 and the 1st and 2nd Quarters of FY 2017, DOJ will send an Open Source Summary to States, which will contain all reportable deaths identified through the open source review as occurring during that timeframe and that did not occur in or under the jurisdiction of jails, prisons, or other correctional facilities. DOJ will send the Open Source Summary by May 31, 2017. DOJ will request States to submit Incident Reports for each of the identified deaths by November 30, 2017. Reportable deaths that occurred in jails, prisons, or other correctional facilities during 2016 and 2017 will be captured through BJS' existing jails and prisons collections. *DOJ will not be making any compliance determinations or assessing penalties on States based on States' reporting of FY 2016 or FY 2017 data.*

***Publicly Available Information.***

To advance DCRA's aims of transparency and evidence-based policy development, DOJ will release certain information to the public each fiscal year, including the State plans, the number of deaths reported for each agency and facility, and data on the circumstances surrounding those deaths. The information released would otherwise be subject to public disclosure under the Freedom of Information Act. The release will be consistent with Department policies and any applicable federal laws, including federal privacy laws, and will not contain personally identifiable information.

**(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:** For purposes of this burden calculation, it is estimated that for each fiscal year there will be a total of 1900 reportable deaths by 1,060 LEAs, 1,053 reportable deaths by 600 jails, and 3,483 reportable deaths by prisons.

For FY 2016, the total projected respondent burden is 2,124.00 hours. For States to review and complete the Open Source Summary (DCR-2) at 4.00 hours per Summary and to complete the corresponding Incident Reports (DCR-1A) at 0.25 hours per Report, the total estimated burden is 475.00 hours. For LEAs, the estimated burden to assist States in completing Incident Reports is 0.75 hours per Report for a total of 1,425.00 hours.

For FY 2017, the total projected respondent burden is 14,172 hours. States will need an estimated 4.00 hours to complete each Quarterly Summary for a total of 2,240.00 hours, 0.25 hours to complete each corresponding Incident Reports (DCR-1A) for a total of 475.00 hours, and 4.00 hours for the Open Source Summaries (DCR-2) for a total of 224.00 hours.

Additionally, States must develop the State Data Collection Plan in FY2017 to meet the October

1, 2017, deadline. The estimated burden is 160.00 hours for a total of 8,960.00 hours. For LEAs in FY 2017, the estimated burden to assist States in completing the Quarterly Summaries is 0.40 hours per Report for a total of 848.00 hours, and a total of 1,425.00 hours, at 0.75 hours for each corresponding Incident Report.

For FY2018, the total projected respondent burden is 14,428.49 hours. The increase over FY 2017 is due to requiring reportable deaths from jails and prisons in addition to arrest-related deaths but is offset by the need for each State to devote approximately significantly less time – approximately 8.00 hours, for a total of 448.00 hours – to update instead of develop its State Data Collection Plan. Additionally, based on the same per report estimates described for FY 2017, the projected aggregate burden for States is 4,480.00 hours to complete the Quarterly Summaries (DCR-1), 1,713.49 hours to complete the corresponding Incident Reports (DCR-1A and DCR-1B), and 224.00 hours to complete the Open Source Summaries (DCR-2).

For LEAs in FY 2018, the estimated burden to assist States in completing the Quarterly Summaries is a total of 1,696.00 hours, while the total to assist States in completing Incident Reports remains 1,425.00 hours. The estimated burden for jails is a total of 960.00 hours to assist States in completing the Quarterly Summaries and 789.75 hours in completing Incident Reports. Finally, the estimated burden for prisons to assist States in completing the Quarterly Summaries is a total of 80.00 hours, and a total of 2,612.25 hours to assist States in completing Incident Reports.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.



Dated: December 13, 2016

**Jerri Murray,**

*Department Clearance Officer for PRA,*

*U.S. Department of Justice.*

**Billing Code: 4410-18**

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